



VIRGINIA FOREST PRODUCTS ASSOCIATION

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November 8, 2010

NOTE: Provided Via Electronic Submission To:

<http://www.regulations.gov/search/Regs/home.html#submitComment?R=0900006480b54c95>

Attention: **Docket ID No. EPA-R03-OW-2010-0736**

Water Docket
Environmental Protection Agency
Mailcode: 28221T
1200 Pennsylvania Ave., NW.
Washington, DC 20460

Dear Sir/Madam:

The Virginia Forest Products Association (VFPA) appreciates the opportunity to submit comments on the proposed Chesapeake Bay Total Maximum Daily Load (TMDL).

The Virginia Forest Products Association is a non-profit organization representing members engaged in or supporting the forest products industry in the Commonwealth of Virginia. While our membership includes companies of varying sizes, our **typical member would best be classed as a small business, with the majority being family owned and operated.**

Virginia's forest products industry is one of the State's largest manufacturing activities. A recent government sponsored economic study¹ shows that forestry and agriculture comprise the largest economic segment of the Commonwealth, with forestry contributing \$23 billion annually in total economic impact while providing jobs for 144,000 Virginians. Forests are the largest land use in the State, covering 62% of Virginia's land mass, and forest products related economic activity is found in every county and city of the Commonwealth.

Recent economic conditions have placed a severe toll on the industry ... easily the worst since the Depression, with many facilities closing their doors either temporarily or permanently. As an example, studies have shown the number of sawmills in the State in 2009 is one-half of the total found in 1999, just 10 years previous. Any additional regulatory burdens placed on the industry, particularly those that have questionable cost vs. benefit ratios, will put many more facilities at risk.

Many of our industry's operations include ownership of forest lands, and we also depend on the non-industrial private landowners who control the overwhelming majority of timberlands in the Commonwealth. Any additional regulations that impact these ownerships (*such as farmers and other landowners*) have a definite impact on the cost and availability of the raw

A non-profit, non-governmental, privately supported association of individuals, firms and corporations having an interest in the Commonwealth's multi-billion dollar forest products industry.

November 8, 2010

Regarding: Docket ID No. EPA-R03-OW-2010-0736 [i.e. "Chesapeake Bay TMDL"]

materials we depend upon.

We have serious concerns regarding the method of implementation and make-up of a Chesapeake Bay TMDL. These concerns are based upon the following key areas.

First, we feel there has been significant progress already demonstrated in many environmental areas by Virginia landowners, showing significant commitment to environmental stewardship. We all depend on clean water and good soils. We have been doing our part, and will continue to do so.

Regarding forest management, statistics by the Virginia Department of Forestry show that an overwhelming percentage of timber harvesting operations use the proper combination of water pollution control practices to reduce sedimentation in our streams and rivers. This has been accomplished by industry supported legislation, including Virginia's Silvicultural Water Quality Law. This law has been amended (*and again, supported by industry*) to accomplish additional goals such as mandatory notification to allow state officials to easily locate harvesting operations for water quality monitoring and enforcement efforts.

Studies have shown that a robust forest industry provides significant incentives for landowners to keep their lands forested and provide the buffers and vegetation to help control soil and nutrient runoff. We have been proud of the Commonwealth's landowners in supporting tree planting and reforestation as well as effective forest management that supports a healthy Chesapeake Bay.

In the early 1970's, the forest industry supported the development of Virginia's Reforestation of Timberlands program, funded primarily by a tax on our industry (*with matching funds from the State*) which provides cost-share assistance for landowners to continue using their lands to produce timber. This program, the first of its kind in the nation, served as a model for many other states as well as the Federal government. We have concerns that these many actions over the past 40 years have not been "counted" or provided consideration by EPA in the various models being considered.

Our second serious concern is the Chesapeake Bay Model, the basis for nutrient and sediment reductions required by EPA, has been shown to have extensive flaws in the data it utilizes. EPA even acknowledges this fact. EPA should not move ahead with costly mandates based upon flawed modeling and data.

Some examples of these flaws include:

- In 2010, Virginia Cooperative Extension conducted a field observation study in the Coastal Plain. They found that 90% of crop acres were planted in no-till. Yet, only 15% of the acres are enrolled and recognized in the Virginia Department of Conservation and Recreation's (DCR) no-till program.
- Is the model fully accounting for practices that are already mandated by state permitting programs?
- The model is currently "throwing out" actual, ground-truthed data from Virginia because it does not meet the "modeled" land use data. This is unfair when the practices are meeting all requirements set forth by EPA.

Federal actions **must be based on accurate information**. No additional regulations or penalties should be put on states or industries until the science and data have been proven.

Third, we have concerns regarding the potential cost of compliance taking into consideration the current economy. The Bay TMDL, which requires Virginia to develop a Watershed Implementation Plan

November 8, 2010

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(WIP), will have a high cost for compliance for all sectors. While we agree that there is a benefit of clean waters within the Bay and local watersheds, the economic costs for compliance must be balanced, and water quality programs cannot be developed in a vacuum without considering economic impacts to the economy.

Before moving forward with a finalized Bay TMDL, EPA must conduct a non-biased economic impact analysis. Experts from land-grant universities from across the watershed could be called upon to evaluate the actual costs of meeting water quality standards for businesses, citizens, localities, states, and the federal government.

Current funding estimates are only based upon the cost of installing the practice, and they do not account for costs like loss of productive land, replacing practices when weather damages occur, fluctuations in markets, etc. Economic conditions (*lack of profits, increased input costs, additional credit not an option*) means that extra money to meet regulations is non-existent.

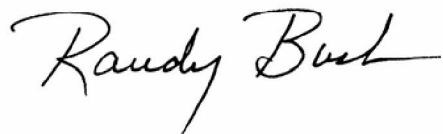
Cost share funding will be critical to meeting demands of EPA. Forestry, as well as agriculture, lawn care, turfgrass, and others, have all seen depressed profits, just as the State and local governments have been facing historic deficits. Individual businesses, landowners, farmers, and the State cannot meet this unfunded mandate from EPA without significant federal funding.

Finally, we have serious concerns about Federal Backstops. EPA does not need to substitute its version of heavy-handed, government regulation if the state chooses to build off of the incentive-based practices and programs that have resulted in progress over these many decades.

EPA’s “backstop” measures put in the TMDL will certainly result in more costs for permitted facilities, such as large animal feeding operations, processing facilities, and urban landscapes. We question the “reasonable assurance” offered by EPA’s backstops, as current regulatory authority and details on new requirements are both unclear. Instead of forcing states to regulate their way out of “backstops,” we urge EPA to allow Virginia to implement its own plans for achieving clean water goals—without costly, burdensome regulations.

The Virginia Forest Products Association appreciates the opportunity to submit these comments to the EPA. If we can provide any additional information, please don’t hesitate to contact us.

Respectfully submitted,



J. R. (Randy) Bush, CAE
President

Copy: The Honorable Robert F. McDonnell, Governor – Commonwealth of Virginia
The Honorable Todd Haymore – Secretary of Agriculture & Forestry – Commonwealth of VA
Virginia’s Chesapeake Bay TMDL Section: VABAYTMDL@dc.virginia.gov

¹ *The Economic Impact of Agriculture and Forestry on the Commonwealth of Virginia* – Rephann - Weldon Cooper Center for Public Service – University of Virginia, September, 2008. www.coopercenter.org